



**PLANNING DEPARTMENT
Staff Report**

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Board of Appeals

**TO: Chairperson and Members
Board of Appeals**

DATE: March 4, 2010

**FROM: Scott A. Mutch
Zoning Enforcement Officer & Assistant Town Planner**

**SUBJECT: File #10-01: 28 Esterbrook Road – Proposed Demolition of Existing Single
Family Residence and Construction of New Residence**

The applicant, Daniel Silva, is requesting a variance in order to demolish an existing single family residence and construct a new single family residence on a non-conforming lot as required under the terms set forth within the Town of Acton's Zoning Bylaw, Section 8.3.6 – Replacement of Single- and Two-Family Dwellings.

ZONING / SITE DATA

Section 8.3.6 of the Town of Acton's Zoning Bylaw which regulates the Replacement of Single- and Two-Family Dwellings, states that "A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:

- 8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
- 8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of the Bylaw.
- 8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.
- 8.3.6.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required."

Legal

Description: Middlesex South District Registry of Deeds: Book: 24829; Page: 378; Plan 375 of 1989
Town of Acton Atlas: Map F5; Parcel 22.

Zoning: R-8 (Residence 8), Residential Zoning District

Bylaw Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²)	80,000	46,080*	No Change
Min. Lot Frontage (ft)	200'-0"	201.04'	No Change
Min. Front Yard	45'-0"	39'-4"	Unknown**
Min. Side Yard (ft)	20'-0"	23'-4"	Unknown**
Min. Rear Yard (ft)	20'-0"	147.2'	Unknown**
Maximum Building Height (ft)	36'-0"	Unknown	Unknown***

- * The "Certified Plot Plan" provided in the application is not signed and sealed by a Massachusetts Registered Land Surveyor, therefore, the lot area indicated on the plans is not verifiable at this time. The existing lot area indicated above is taken from the Engineering Department's field card.
- ** The currently submitted application does not include a site plan showing the proposed location of the new structure.
- *** The elevation drawings currently submitted do not identify any dimensions with regards to the proposed height of the dwelling.

STAFF ANALYSIS

The subject property is located within an R-8 Residential Zoning District. The property, as it currently exists, is non-conforming with respect to the minimum lot area requirement. Based upon the Town of Acton's Zoning Bylaw requirements, the minimum lot area for property located within an R-8 zoning district is 80,000 ft². According to the Engineering Department's Index Reference Cards, the existing property is only 46,080 ft² which results in the non-conforming lot status. Due to the non-conforming lot size status, Section 8.3.6 of the Zoning Bylaw is applicable when an existing structure is being proposed to be demolished and a new structure constructed.

The variance application does not currently include a proposed site plan identifying the proposed location of the new dwelling and therefore, there are no proposed front, side and rear yard setbacks indicated. The plot plan currently provided, shows that there are wetlands running along the western side of the property. The 75'-0" wetland setback extends through the middle of the property. Therefore, the remaining "buildable area" of the property is significantly reduced in size. Based upon this information, it may or may not be possible to construct a new dwelling which complies with minimum front and side yard setbacks. It is conceivable that additional variances may be required.

The elevation drawings provided for the new structure do not indicate an overall proposed height. The proposed dwelling is a two-story structure with a pitched roof. A standard two-story, residential dwelling with 8'-0" ceiling heights, a pitched roof, and which is located on a relatively flat parcel of land would more than likely comply and satisfy the maximum permitted height requirement of the Zoning Bylaw. Any significant grade changes or sloping of land on the property could alter the overall height of the structure and require an additional height variance.

The "Certified Plot Plan" currently submitted as part of the variance application package indicates a "New Shed Location" which is non-compliant with minimum setback requirements. The shed should be relocated to satisfy and comply with the minimum side and rear yard setback requirements. A final certified "As-Built Plot Plan" signed and sealed by a Massachusetts Registered Land Surveyor should be submitted verifying the shed's setback compliance prior to any final sign-offs or Certificate of Occupancy being approved or issued.

According to the Town of Acton Assessor's Office field card, the existing home on the property is approximately 1,008 square feet in size. According to the variance application, the new proposed dwelling is 2,800 square feet in size. The new dwelling unit is approximately 278% larger in terms of square footage than the existing dwelling unit. This fact is the essence of the variance request currently before the Board of Appeals. To summarize the previously stated requirements of Section 8.3.6 of the Town of Acton's Zoning Bylaw, the existing home can be demolished and a new residential structure is permitted to be constructed, however, the initial reconstruction or construction of any new structure is limited to the same maximum square footage (FAR) of the existing home prior to its demolition. Once the new structure has been rebuilt and a Certificate of Occupancy has been issued and in existence for a minimum of two (2) years, only then can an increase in the overall total square footage be permitted.

HISTORICAL / BACKGROUND INFORMATION

The Town of Acton's Zoning Bylaw was amended during the Annual Town Meeting in April 2007 to adopt and insert Section 8.3.6 as it currently exists today. The Zoning Bylaw prior to April 2007 allowed for the restoration of structures after fire, flood, or similar disaster on lots that are nonconforming due to insufficient frontage or area, either by right if the damage amounts to 50% or less of the structure's value, or by special permit if the damage exceeds 50% of the value. The Zoning Bylaw did not allow for the intentional demolition and rebuilding of structures on such nonconforming lots. The amendment changed this for single and two-family homes on such lots. The amendment allows for their tear-down and replacement. The amendment adoption permitted a replacement residence to be allowed as of right if it complies with applicable setback and height requirements of the bylaw and, as a barrier against speculative tear-downs, if it initially is not larger than the residence it replaced. Additions could be made later by a home owner, similar in fashion to other additions which are permitted to existing homes on non-conforming lots.